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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,815	12/03/2003	Paul Kateman	17303-0008D1	4121

24267 7590 05/19/2004

CESARI AND MCKENNA, LLP  
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EXAMINER

TAPOLCAI, WILLIAM E

ART UNIT	PAPER NUMBER
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3744

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	Application No. 10/726,815	Applicant(s) KATEMAN ET AL.	
	Examiner William E. Tapolcai	Art Unit 3744	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18,21,22,24 and 26-32 is/are allowed.
- 6) ☒ Claim(s) 1-5,7,8,12,13,16,17,19,23,25 and 33-38 is/are rejected.
- 7) ☒ Claim(s) 6,9-11,14 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 7, 8, 19, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neumann et al. Neumann et al discloses the claimed invention except for the liquid being frozen. The type of liquid being frozen is considered to be a matter of obvious choice to one of ordinary skill in the art, because no criticality or unexpected results are seen or have been disclosed for the recitation of the liquid produce mix being used instead of water.
3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neumann et al in view of Fogt. Neumann et al discloses the claimed invention except for the step of monitoring the temperature of the surface. Fogt teaches an ice maker having a sensor 290 for monitoring the temperature of the ice mold. It would be obvious to provide Neumann et al with the step of monitoring the temperature of the surface 34, in view of Fogt, for the purpose of controlling the freezing temperature of the surface.
4. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neumann et al in view of Kateman et al. Neumann et al discloses the claimed invention except for the step of mixing a liquid ingredient and a fluid ingredient. Kateman et al teaches a freezer including a mixer for two ingredients. It would be obvious to substitute, for water as the substance to be frozen, a mixer for two

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ingredients, as taught in Kateman et al, for the purpose of freezing food products when desired.

5. Claims 16, 17, 23, 25, and 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neumann et al in view of Rader. Neumann et al discloses the claimed invention except for the horizontal surface being rotary. Rader teaches a freezer having a horizontal surface which is rotary. It would be obvious to make the horizontal surface of Neumann et al rotary, in view of Rader, for the purpose of ease of maintenance and repairs.

6. Claims 6, 9-11, 14, 15, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


7. Claims 18, 21, 22, 24, and 26,32 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William E. Tapolcai whose telephone number is (703) 308-2640. The examiner can normally be reached on Mon. - Thurs., 6:30 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise L. Esquivel can be reached on (703) 308-2597. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
William E. Tapolcai  
Primary Examiner  
Art Unit 3744

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May 17, 2004